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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR        | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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SUTHERLAND ASBILL & BRENNAN LLP  
999 PEACHTREE STREET, N.E.  
ATLANTA, GA 30309

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| EXAMINER |
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VANAMAN, FRANK BENNETT

|          |              |
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| ART UNIT | PAPER NUMBER |
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3618

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 02/15/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/709,490

Applicant(s)

SCHREUDER ET AL.

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 17-24 and 32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 25-31, 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **Status of Application**

1. Applicant's amendment, filed July 28, 2006 and supplemental response filed August 8, 2006, have been entered in the application. Claims 1-33 are pending, claim 33 is newly added, claims 17-24 and 32 are withdrawn from consideration a being directed to a non-elected invention.

### **Claim Rejections - 35 USC § 103**

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-10, 12 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin (US 4,045,048) in view of Sueshige et al. (US 6,390,216, cited by applicant). Irwin teaches a mobile device which may accommodate a user thereon (12); having a steering mechanism including at least a pair of foot sleds (42, 44), base portions (30, 32), the base pivotally connected with the foot sleds (proximate 34, 36), at least one pivot pin (66, 64, 68, 72, 74, etc.) about which portions of the base may pivot, the steering mechanism including at least a plurality of poles (left and right portions of 20; 18, 14, etc.) which are attached to- and co-operate with- the base and foot sleds, and which cause pivoting about the pivot pins when moved in clockwise or counterclockwise directions, a front wheel (24) a pair of rear wheels (38, 40), the rear wheels having brakes associated therewith (48, 50).

As regards claim 5, the reference to Irwin fails to teach a pair of front wheels (24), however it is well established that it is not beyond the skill of the ordinary practitioner to duplicate already-taught parts for the purpose of enhancing or multiplying the function of the taught part[s], and in this case, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a pair of front wheels in place of the single wheel, for the purpose of increasing the surface contact area of the cart, lowering the per-wheel load distribution.

The reference to Irwin fails to teach a product compartment, motor drive and rechargeable battery. Sueshige et al. teach a mobile device including a product compartment (96) positioned around a steering mechanism (31, 32) in a removable manner (compare figures 22, 23); the vehicle further including at least one battery (68),

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which may drive at least one motor (M, 13) associated with a rear wheel pair (17, 18), wherein a stopping of the motor engages a regenerative braking mode (col. 13, lines 17-18), which lacking any other storage structure would be understood to recharge the battery (68). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the vehicle of Irwin with a compartment taught by Sueshige et al. for the purpose of carrying objects (and while Sueshige et al. fail to explicitly teach objects in the compartment, in view of its purpose, it would not be at all beyond the skill of the ordinary practitioner to provide objects to be accommodated therein); further it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart taught by Irwin with a motor and battery drive arrangement as taught by Sueshige et al. for the purpose of allowing the vehicle to be mobile without requiring substantial physical effort on the part of the user.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin in view of Sueshige et al. and Farmer (US 6,712,171). The references to Irwin and Sueshige et al. are discussed above and fail to teach a lid and lockout device associated with the compartment, wherein the drive mechanism is locked out if the lid is open. Farmer teaches a vehicle having a lid element (15) which connects with a lockout device (14/18) which prevents operation of a portion of the vehicle drive when the lid is open (figures 3a, 3b). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the compartment taught by Irwin as modified by Sueshige et al. with a lid and lockout as taught by Farmer for the purpose of ensuring that the vehicle does not move under power should a user be accessing the compartment, or when items are being placed in the compartment.

5. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin in view of Sueshige et al. and Weiss et al. (US 6,502,656). The reference to Irwin as modified by Sueshige et al. is discussed above and fails to teach the compartment as comprising an insulated shell and having a doubly-hinged lid. Weiss et al. teach a portable mobile device which includes a top (22) doubly hinged (28, 28) to an optionally insulated container (12, 13, note col. 3, lines 46-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the

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container taught by Irwin as modified by Sueshige et al. as an insulated container with a doubly-hinged lid as taught by Weiss et al, for the purpose of maintaining a cool or warm desired temperature for the items carried in the compartment.

6. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin in view of Sueshige et al. and Nicholl et al. (US 2,812,187). The reference to Irwin as modified by Sueshige et al. is discussed above and fails to teach the compartment as including a lift mechanism biased towards an end of the compartment. Nicholl et al. teach a carrier including a compartment (15, 16, 21, etc.) which is provided with a lift mechanism (30, 31, 32, 34, 37, etc.) biased towards an end of the compartment (through 22, 28, 29, 36'). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the compartment taught by Irwin as modified by Sueshige et al. with a biased lift portion as taught by Nicholl et al. for the purpose of allowing the accommodation of a greater quantity of items if items of sufficient weight are placed in the compartment.

7. Claims 25, 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sueshige et al. (cited above). Sueshige et al. teaches a mobile device including a steering means (2, 34, 35) and a removable product compartment (96 compare figures 22, 23) positioned about the steering means, further including a drive means (M, 13) associated with the cart, and thus the steering means. The reference to Sueshige et al. fails to teach the compartment as containing a plurality of products, however in view of the purpose of the compartment (i.e., to contain and carry objects), it would not be at all beyond the skill of the ordinary practitioner to provide objects to be accommodated therein, for the purpose of utilizing the compartment for its intended use.

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sueshige et al. in view of Weiss. The reference to Sueshige et al. is discussed above and fails to teach the compartment as comprising an insulated shell. Weiss et al. teach a portable mobile device which includes a top (22) hinged to an optionally insulated container (12, 13, note col. 3, lines 46-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the container taught by Sueshige et al. as an insulated container as taught by Weiss et al, for the purpose of

maintaining a cool or warm desired temperature for the items carried in the compartment.

9. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sueshige et al. in view of Nicholl et al. The reference to Sueshige et al. is discussed above and fails to teach the compartment as including a lift mechanism biased towards an end of the compartment. Nicholl et al. teach a carrier including a compartment (15, 16, 21, etc.) which is provided with a lift mechanism (30, 31, 32, 34, 37, etc.) biased towards an end of the compartment (through 22, 28, 29, 36'). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the compartment taught by Sueshige et al. with a biased lift portion as taught by Nicholl et al. for the purpose of allowing the accommodation of a greater quantity of items if items of sufficient weight are placed in the compartment.

10. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sueshige et al. in view of Farmer. The reference to Sueshige et al. is discussed above and fails to teach a lid and lockout device associated with the compartment, wherein the drive mechanism is locked out if the lid is open. Farmer teaches a vehicle having a lid element (15) which connects with a lockout device (14/18) which prevents operation of a portion of the vehicle drive when the lid is open (figures 3a, 3b). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the compartment taught by Sueshige et al. with a lid and lockout as taught by Farmer for the purpose of ensuring that the vehicle does not move under power should a user be accessing the compartment, or when items are being placed in the compartment.

#### **Response to Comments**

11. Applicant's comments, filed with the amendment, have been carefully considered. Applicant has asserted that Irwin fails to include foot sleds as a part of the steering mechanism. The examiner disagrees. Irwin is directed to a cambering vehicle, the operation of which class of vehicles is notoriously old and well known, and Irwin even mentions steering based on cambering (as controlled by the foot sleds) at col. 1, line 67 through col. 2, line 1. Applicant asserts that the foot sleds appear to be directly attached to the shaft 28. This is correct. What applicant fails to additionally state is that

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the direct connection is pivotal as can be easily determined from a cursory examination of figure 2, in combination with Irwin's disclosure at col. 3, lines 29-34. As regards Irwin's provision of plural poles for steering, note elements 16, 18 and 20, each of which comprises a pole to the breadth claimed. That Irwin teaches a steering column is noted. That is comprises a plurality of poles is additionally noted, and such was specifically pointed out in the previous office action. As regards claims 13 and 14, and the additional reference to Weiss, the examiner notes that Weiss teaches the elements to the breadth that they are actually recited in the claims. As regards the reference to Sueshige et al., applicant has asserted a means-plus-function recitation, and addressed paragraph 0052 as describing the associated structure. The examiner notes, however, that paragraph 0053 discloses a different means for allowing a driver to steer the vehicle whilst standing, and initially there is no clear indication in the specification as to which of these arrangements is to correspond to the claimed means-plus-function recitation. From MPEP 2181:

35 U.S.C. 112, sixth paragraph states that a claim limitation expressed in means-plus-function language "shall be construed to cover the corresponding structure...described in the specification and equivalents thereof." "If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112."

In addition, the examiner notes that Sueshige et al. teaches an equivalent, as best understood, inasmuch as the structure taught by Sueshige et al. as identified by the examiner constitutes a means for a driver to steer the device while standing.

From MPEP 2182:

As noted in MPEP § 2181, in *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994) the Federal Circuit recognized that it is important to retain the principle that claim language should be given its broadest reasonable interpretation. This principle is important because it helps insure that the statutory presumption of validity attributed to each claim of an issued patent is warranted by the search and examination conducted by the examiner. It is also important from the standpoint that the scope of protection afforded by patents issued prior to *Donaldson* are not unnecessarily limited by the latest interpretation of this statutory provision. Finally, it is important from the standpoint of avoiding the necessity for a patent specification

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to become a catalogue of existing technology. The specification need not describe the equivalents of the structures, material, or acts corresponding to the means- (or step-) plus-function claim element. See *In re Noll*, 545 F.2d 141, 149-50, 191 USPQ 721, 727 (CCPA 1976) ("The meaning of 'equivalents' is well understood in patent law, ... and an applicant need not describe in his specification the full range of equivalents of his invention.") (citation omitted). A patent specification need not teach, and preferably omits, what is well known in the art. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986). The *Donaldson* decision thus does not substantially alter examining practice and procedure relative to the scope of the search. Both before and after *Donaldson*, *the application of a prior art reference to a means or step plus function limitation requires that the prior art element perform the identical function specified in the claim.*

In this case, the structure taught by Sueshige et al. performs the identical function specified in the claim.

Throughout the comments, it appears as though applicant is arguing limitations to a degree of specificity not actually found in the claim recitations. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

From MPEP 2111:

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).



As regards claim 33, applicant has not specifically described how the claim defines beyond the prior art, and such a lacking would be understood to be non-responsive based on the requirements set forth in 37 CFR 1.111(b).

**Conclusion**

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

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Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**

Handwritten signature of F. Vanaman, dated 2/5/07.